

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-02

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 L-03 H-02 CIAE-00

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R 171343Z SEP 75

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 860

AMCONSUL CALI

AMCONSUL MEDELLIN

UNCLAS BOGOTA 8942

EO 11652: NA

TAGS: EFIN CO

SUBJ: COLOMBIAN COURT JURISDICTION OVER FOREIGN BANK LOANS

REF: BOGOTA 7163

1. BY MEANS OF DECREE NO 1670 OF AUGUST 18, 1975 (DECREE REGULATING THE EXECUTION OF CONTRACTS BY THE NATION AND ITS DECENTRALIZED ENTITIES), THE GOC HAS PUT INTO EFFECT THE REQUIREMENT THAT DISPUTES ARISING FROM FOREIGN COMMERCIAL LOANS TO THE PUBLIC SECTOR ARE IN THE MOST INSTANCES SUBJECT TO THE JURISDICTION OF COLOMBIAN COURTS. AN UNOFFICIAL EMBASSY TRANSLATION OF THE APPLICABLE ARTICLES FOLLOWS:

SUBMISSION TO COLOMBIAN LAW

ARTICLE 63 - REGARDING SUBMISSION TO COLOMBIAN LAW AND COURTS. CONTRACTS WHICH THE NATION ENTERS INTO WITH FOREIGNERS ARE SUBJECT TO COLOMBIAN LAW AND TO THE JURISDICTION OF COLOMBIAN COURTS. IT SHOULD BE MADE CLEAR WITHIN THESE CONTRACTS THAT FOREIGN CONTRACTORS WAIVE THEIR RIGHT TO ATTEMPT A DIPLOMATIC CLAIM AS REGARDS RIGHTS AND OBLIGATIONS ARISING FROM THE
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CONTRACT, EXCEPT IN THE CASE OF DENIAL OF JUSTICE.

DENIAL OF JUSTICE DOES NOT INCLUDE THOSE CASES IN WHICH THE CONTRACTOR HAS HAD AVAILABLE THE MEANS AND RESOURCES WHICH, IN ACCORDANCE WITH COLOMBIAN LAW, CAN BE EMPLOYED BEFORE THE COURTS.

CONTRACTS SIGNED ABOARD, BUT WHICH WILL BE UNDERTAKEN WITHIN THE COUNTRY, WILL BE GOVERNED BY COLOMBIAN LAW.

ARTICLE 64- REGARDING THE WAIVER OF DIPLOMATIC CLAIMS. CONTRACTS WHICH THE NATION EXECUTES CANNOT BE ENTERED INTO WITH FOREIGNERS WHO DO NOT EXPRESSLY RENOUNCE ALL DIPLOMATIC CLAIMS, IN ACCORDANCE WITH THE PRECEDING ARTICLE.

LOAN CONTRACTS

ARTICLE 115- REGARDING APPLICABLE JURISDICTION AND THE ARBITRATION CLAUSE. LOAN CONTRACTS WILL BE SUBJECT TO COLOMBIAN LAW AND TO THE JURISDICTION OF COLOMBIAN COURTS AND JUDGES. NEVERTHELESS, THE CLAUSE IN THE CONTRACT DEALING WITH ARBITRATION AND SUBMISSION OF THE CONTRACT OR WITH ARBITRAL JUDGEMENT MAY STIPULATE, IN ACCORDANCE WITH THE CASE, A DECISION OR RATIFICATION OF THE NATIONAL OR INTERNATIONAL COURT OF ARBITRATION TO WHICH THE PARTIES AGREE.

PARAGRAPH: AGREEMENTS ENTERED INTO WITH GOVERNMENT CREDIT ENTITIES OF OTHER COUNTRIES WILL, WITH RESPECT TO MATTERS OF JURISDICTION, BE SUBJECT TO THE TERMS OF THE AGREEMENT ITSELF.

2. EMBASSY IS ATTEMPTING TO OBTAIN FOR TRANSMITTAL TO THE DEPARTMENT A TRANSLATION OF THE ENTIRE DECREE.
VAKY

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